

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 01-2935

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Jo Ann Hoffmann,

Appellant,

v.

United States of America, under  
designated authority of agent Hildegard  
Conte Perlstein, agent, Edward E. Hunt,  
III, agent, Air Force Legal Services  
Agency,

Appellee,

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Appeal from the United States  
District Court for the Western  
District of Arkansas.

[UNPUBLISHED]

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Submitted: October 23, 2001

Filed: October 26, 2001

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Before WOLLMAN, Chief Judge, HANSEN, and RILEY, Circuit Judges.

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PER CURIAM.

Jo Ann Hoffmann appeals the district court's<sup>1</sup> dismissal of her Federal Tort Claims Act (FTCA) action for failure to serve the defendant. We grant her leave to

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<sup>1</sup>The Honorable Jimm Larry Hendren, Chief Judge, United States District Court for the Western District of Arkansas.

appeal in forma pauperis, and we affirm the dismissal, modifying it to be without prejudice.

We conclude that the district court did not abuse its discretion in dismissing Hoffmann's action for insufficient service. See Bullock v. United States, 160 F.3d 441, 442 (8th Cir. 1998) (per curiam) (standard of review). In an FTCA action, the United States is the real defendant. See 28 U.S.C. § 2679. To serve the United States properly, Hoffmann had to deliver a copy of the summons and complaint to the U.S. Attorney's Office for the district in which the action was brought, as well as to the Attorney General of the United States. See Fed. R. Civ. P. 4(i). Hoffman served neither. Because more than 120 days had passed between the filing of the complaint and the dismissal, the district court could dismiss the action sua sponte; however, the dismissal should have been without prejudice. See Fed. R. Civ. P. 4(m) (where service is not timely made, "court . . . shall dismiss the action without prejudice").

The judgment is affirmed, but the dismissal is modified to be without prejudice.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.